

## GLOBAL WAR: THE CONCEPT OF MODERN WAR UNDER ATTACK

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*ABSTRACT. This article analyzes how the concept of modern war has been changed in its basic elements by the effects of globalization at the beginning of this century. The article takes a critical-analytical approach which seeks to structure the theoretical arguments from an historical perspective beginning with the transition from religious war to modern war. After examining how war became a globalized event at the beginning of the 21st century, the article proposes that one way to overcome—or attenuate the main effects of—the present reality presented by global war in the context of international relations would be to adopt a juridical globalism articulated into regionally based Nation-State communities.*

**KEY WORDS:** *Philosophy of law, international relations, war.*

*RESUMEN. El presente artículo analiza cómo el concepto moderno de guerra ha ido cambiando en sus elementos básicos desde principios de este siglo, debido a los efectos de la globalización. El artículo parte de un enfoque crítico y analítico que busca estructurar los argumentos teóricos desde una perspectiva histórica, comenzando con la transición de la guerra religiosa a la guerra en su concepto moderno. Después de examinar cómo la guerra se convierte en un fenómeno globalizado a principios del siglo XXI, el artículo sostiene que una forma de superar—o atenuar— los efectos de la guerra global en el contexto mundial imperante sería mediante la adopción de un ordenamiento jurídico global a partir de la articulación de comunidades regionales de Estados.*

**PALABRAS CLAVE:** *Filosofía del derecho, relaciones internacionales, guerra.*

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## I. INTRODUCTION

In addition to increasing contact between the cultures and peoples of the world, deepening the relationship between national and international markets, and changing traditional political concepts of the Modern State, globalization has also produced profound changes in military theory and practice. The traditional concept of modern war completely changed its character during the 20th century as the level of dissemination of weapons of war, both among countries (horizontal spread) or within countries to paramilitary groups (vertical spread) has increased at frantic speed. The illegal weapons market, which a few decades ago was not a significant problem for the international community, is now so professionalized that the use of weapons exclusive to the world's greatest armies is now available for anyone interested and able to pay. For these reasons, and especially due to the consolidation of the notion of global war in the international lexicon, it is important to present some considerations about what appears to be another consequence of the globalization processes.

This article begins with a brief reconstruction of the concept of modern war, going back to the medieval ideas of *bellum justum* and *jus ad bellum* to the formation of international law also concerned with *jus in bello*. The article then analyzes the transformations produced both by the end of the Cold War and the expansion of globalization, in the 20th century, to the basic elements of modern war. In the final part of this article, I propose establishing a juridical globalism articulated in Nation-States communities, in order to handle the new nature of war in the contemporary era. The proposed structure is generally similar to the European Union's structure, but my perspective has a distinct philosophical and normative grounding.

## II. THE CONSTRUCTION OF THE CONCEPT OF MODERN WAR

Concomitantly with the consolidation of the Modern State, and maybe as a consequence, we can find an essential modification in the historical development of the concept of modern war: the transition from religious war to modern war. Until the Peace of Westphalia in 1648, that ended the Thirty Years' War, religious influence on the causes of war prevailed in deciding whether to go to war or not. In this sense, the Crusades became famous: a modality of war whose main cause was not a political issue, but simply the consolidation of the *auctoritas spiritualis* of the *Respublica Christiana* over its territories and over every single "infidel" — a term which simply ignored the possibility of any religion other than Catholicism. The Pope held the *potestas spiritualis* that was to be imposed on any people who did not recognize his legitimacy. The *Respublica Christiana* considered itself to be the holder of a cognitive-spatial integrality capable of bringing together the mundane and the transcendental, so that any insurrections inside its territories were not to be considered wars, but rather as insurrections led by infidels, instead of by the enemy.<sup>1</sup>

With the beginning of the Thirty Years' War, a conflict with a religious background was initiated between the Hapsburg Emperor of the Holy Roman Germanic Empire, who was a Catholic, and the commercial city-States in northern Germany, whose religious influence was Lutheran and Calvinist. Only after the development of an almost pandemic war in Europe, with Scandinavian countries like Sweden and Denmark joining in the conflict, and the economic, political and military destruction of all countries involved, was it possible to settle a final agreement to the effect that, from then on, religious freedom would be considered each State's own right and a consequence of its sovereignty. Hence, wars among countries and civil wars for religious reasons lost their political legitimacy and, consequently, ceased in Europe. Carl Schmitt considered the laicization of the concept of war as overcoming the confessional despotism, which during the religious wars of the 16th and 17th centuries provided reasons for the worst forms of cruelty, as well as for the degeneration of war into civil war.<sup>2</sup>

However, the most concrete outcome of the Peace of Westphalia was, in fact, the secularization of public power because real "peace" had not been truly constructed through the development of communitarian rules capable of bringing closer the countries that had been in conflict until then, and generating an environment that favored the rise of a lasting peace.<sup>3</sup> Conse-

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<sup>1</sup> CARL SCHMITT, *DER NOMOS DER ERDE IM VÖLKERRECHT DES IUS PUBLICUM EUROPAEUM* (Duncker&Humblot, 1974).

<sup>2</sup> *Id.* at 164.

<sup>3</sup> ANTONIO CASSESE, *INTERNATIONAL LAW 21* (Oxford University Press, 2001).

quently, the consolidation of a normative international system was very slow and occurred through agreements and bilateral or multilateral treaties. What happened in 1648 was an armistice, *i.e.*, the parties stopped fighting because there were no more reasons that justified the cost and destruction produced by war. Peace was effective with respect to the Hapsburg hegemony, for it had lost its power against Lutheran kingdoms and city-States, but this did not mean the immediate rise of an international community.<sup>4</sup>

### 1. *From Bellum Justum to Jus Ad Bellum*

The concept of modern war later developed from a lay perspective, but did not completely abandon the doctrine of *bellum justum*,<sup>5</sup> which was used to determine that war was forbidden and a State could only start a war if it had a just cause for that —although the concepts of “just cause” were subjective and an occasional unjust war could be ended with recourse to another war. From a formal standpoint, a just war was conditioned by the Church’s authority, whereas from the material aspect it was a conduct *ex justa causa* that aimed at the external affirmation of some juridical claims characteristic of the internal juridical system, but without taking into consideration whether the war was one of aggression or of defense.<sup>6</sup> Basically, the doctrine of just war, instead of permitting the one who was right in the conflict to win, was simply useful to declare whoever won, the rightful winner.<sup>7</sup>

With the loss of power suffered by the Catholic Church in relation to the State and with the transformation of the power of *potestas spiritualis* into *potestas indirectas*,<sup>8</sup> the causes of war were no longer legitimated by that *potestas spiritualis* and started to focus on more “objective” criteria. The rationale that a State uses to legitimate its desire to start a war against another is the moment when the concept of modern war, as we understand it, can actually be visualized. Like the Europeans, who from the 15th century to the 18th century sought in “reason” the element that could distinguish them

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<sup>4</sup> KALEVI J. HOLSTI, *PEACE AND WAR: ARMED CONFLICTS AND INTERNATIONAL ORDER 1648-1989* 40 (Cambridge University Press, 1998).

<sup>5</sup> The expression *bellum justum* has its origin in Ancient Roman Law, and Cicero already used the term when referring to the lawful war destined to submit all those peoples that were against the political and juridical order —the Roman one. See LUIGI LORETO, *IL BELLUM JUSTUM E I SUOI EQUIVOCI* 17 (Jovene Editore, 2001); and PAUL GILBERT, *NEW TERROR, NEW WARS* 16 (Georgetown University Press, 2003).

<sup>6</sup> Schmitt, *supra* note 1, at 133.

<sup>7</sup> NORBERTO BOBBIO, *IL PROBLEMA DELLA GUERRA E LE VIE DELLA PACE* 59 (Il Mulino, 1997).

<sup>8</sup> The expression *potestas indirectas* is here used in the sense that its owner, *i.e.*, the Catholic Church, has no relation of legitimacy with the State.

from the American savages, reason will be one of the main references to define when a war is just and when it is not.<sup>9</sup>

As war began to be known as retribution/reaction, its modern version brought with it the doctrines of *jus ad bellum* and of *jus in bello*. When a State's sovereignty had been violated, the possibility of a State reacting by starting a war against the offender was given the name of *jus ad bellum*. Instead of defending a strong conception of justice, as in the doctrine of *bellum justum*, in this case it is enough that the State's territorial sovereignty be violated to allow it to argue *jus ad bellum* against the offender. In addition to this possibility of going to war for defensive reasons, *jus ad bellum* also included the possibility of going to war as punishment of the offending State and as a way of winning back territories that had been "illegally" lost to another State. But in the 19th century, with the consolidation of the *jus publicum Europaeum*, the possibility also arose for any Sovereign-State member of this international system to argue their *jus ad bellum* as a cause to formally intervene in deliberations and diplomatic negotiations regarding any war taking place on European soil or involving any State on this continent.<sup>10</sup>

## 2. *International Law and jus in bello*

It could be said that *jus in bello* was an attempt of the *jus publicum Europaeum* in the 19th century to formalize war by means of procedures and minimal codes of conduct that should be adopted by the States involved in a war, making the notion of *bellum justum* lose its previous meaning.<sup>11</sup> According to Zolo, war began to be ritualized by a series of diplomatic procedures, such as the declaration of war and the settlement of peace.<sup>12</sup> War, which until then had been an instrument of external politics, began to be treated as an act with legal repercussions and capable of generating criminal responsibility for political leaders.<sup>13</sup>

Bobbio has characterized the preponderantly formal sense of *jus in bello* from a Jusnaturalist perspective. From this point of view, *jus in bello* did not regulate the cause of war but regulated its conduct, regardless of the cause. Regarding the cause of war, the States has no legal limits (in positive law)

<sup>9</sup> "Rationality was a way of looking at the world in which the meaning of an act derived entirely from its utility. Within the framework of practical rationality all means of procuring desired ends are viewed as 'techniques' or 'strategies' rather than as systems of values adhered to on the basis of ethical standards." CHRISTOPHER COKER, *THE FUTURE OF WAR* 26 (Blackwell Publishing, 2004).

<sup>10</sup> Schmitt, *supra* note 1, at 236.

<sup>11</sup> Bobbio, *supra* note 7, at 168.

<sup>12</sup> DANILO ZOLO, *GLOBALIZZAZIONE. UNA MAPPA DEI PROBLEMI* 119 (Laterza, 2004).

<sup>13</sup> Holsti, *supra* note 4, at 228.

but only moral limits (based on natural law); regarding the conduct of war, it also has legal limits which are established by a law enforced within the international community of which it is a member, and that it has itself contributed to produce.<sup>14</sup>

20th century wars overthrew many theoretical and legal constructions that up to that time had supported the conception of modern war. The nuclear attacks on Hiroshima and Nagasaki in 1945 represented the end of any possibility of maintaining a minimum standard of ethics in war, respect for civilians (who are often the victims of their own regimes), respect for *jus in bello* and even respect for the concept of war itself.

An inherent characteristic of war is the conflict, the battle, which Hobbes has defined as the “*act of fighting*.”<sup>15</sup> It must be noted, however, that a nuclear war does not represent conflict, battle or act of fighting. If a nuclear war occurs between two or more States that are all nuclear powers, there would not be a conflict for the purpose of one side vanquishing the other; the conflict would boil down to a few brief decisions concerning attacks whose ultimate end would probably be reciprocal extermination.

After the possibility of a nuclear war arose, the primary responsibility for maintaining international peace and security was assigned to a single body, the United Nations Security Council. The fear of a nuclear conflict led the international community to accept the decisions of this body as binding, since even *jus ad bellum* as retaliation became conditioned by a manifestation of the Security Council, a body which —according to the Charter of the United Nations— is the rightful protector of *international peace and security*. Thus, the military interventions conducted by the UN against countries at war marked the beginning of the fall of modern war. Rendering the conflict and the parties involved impersonal *stricto sensu*, transferring the generic interest in the conclusion of the crisis and in re-establishing peace, is a mode of military intervention that had made all wars subject to international community interests. This shift marks the beginning of global war.

### III. THE EFFECTS OF THE END OF THE COLD WAR ON THE BASIC ELEMENTS OF MODERN WAR

One of the immediate consequences produced by the end of the Cold War in the political-international scene was the transformation of the winning world power (USA) into the world's only superpower, giving it the possibility to expand its dominion to all corners of the world. The end of

<sup>14</sup> Bobbio, *supra* note 7, at 64.

<sup>15</sup> “For Warre, consisteth not in Battell onely, or the act of fighting; but in a tract of time, wherein the Will to contend by Battell is sufficiently known: and therefore the notion of Time, is to be considered in the nature of Warre; as it is in the nature of Weather.” TOMAS HOBBS, *LEVIATHAN* 185-186 (Penguin Classics, 1985) (1651).

the USA/USSR political bipolarization produced and even precipitated overstated conclusions like that of Francis Fukuyama, who has called this process the “end of History”<sup>16</sup> —*i.e.*, the ultimate triumph of liberal democracy over all systems and ideologies that have ever competed with it.

Once the communist axiology —incompatible with the development of almost all globalization processes— lost its supreme political reference, the USSR, the idea of the “*global village*”<sup>17</sup> began to be considered possible. The end of the USSR also seemed to be the great solution to the problems of the U.S. government in the international arena, especially since the Cold War was already part of the past and no country was able to compete with the political, economic and military power of the United States. But with the end of the 20th century and the beginning of the 21st, the massive power of the United States in world politics and the economy, the overwhelming dissemination of its culture to the four corners of the world and, above all, the unquestioned leading role played by the United States in the United Nations have concentrated all attention on this country. The paramilitary groups —usually Islamic fundamentalists—<sup>18</sup> that had also fought against the USSR and its allies now have only a single target to hit: USA.

Originally, the Islamic fundamentalist groups did not support or appeal to terrorist attack tactics; they were an organization of an exclusively religious nature that proclaimed respect for the Koran. The “Muslim Brotherhood,” founded in Egypt in 1928, was one of the first groups that linked the rise of Islamic fundamentalism with terrorist activities.<sup>19</sup> On one hand, the Brotherhood offered armed resistance to the British colonizer, but, on the other, the group developed literacy and medical support programs for the poorest populations of Egypt. The fundamentalists would reconstruct their national identity based on the Islamic religion, as opposed to the political and cultural values of the colonizer.

However, the Brotherhood suffered persecution by the kings of Egypt who were subject to the British Crown. Even after the Egyptian Republic

<sup>16</sup> See FRANCIS FUKUYAMA, *THE END OF HISTORY AND THE LAST MAN* (1992).

<sup>17</sup> See MARSHALL McLuhan, *UNDERSTANDING MEDIA* (1964). We can also see JAMES JOYCE, *FINNEGANS WAKE* (1939), and PERCY WYNDHAM LEWIS, *AMERICA AND COSMIC MAN* (1949), as references to the origins of the expression “global village.”

<sup>18</sup> Some of the most important fundamentalist groups are: Abu Nidal’s Organization (Palestine and Lebanon), Armed Islamic Group (Algeria), Hamas (acting in the Palestinian territories occupied by Israel), Hezbollah (Lebanon), Al-Jihad (Egypt), Palestinian Islamic Jihad (in the Palestinian territories occupied by Israel), Front for the Liberation of Palestine (in the Palestinian territories occupied by Israel), Al Qaeda (originated in Afghanistan, but today acting around the world). Even though these groups have been created as a reaction against regional and specific problems, the uprising’s last fundament is always against values and principles that characterize the United States.

<sup>19</sup> See WALTER LAQUEUR, *NO END TO WAR: TERRORISM IN THE TWENTY-FIRST CENTURY* 31 (Continuum Publishing, 2003).

was established in 1953 by nationalist leader Gamal 'Abd al Nasser, the group continued to be oppressed and remained illegal. Nasser was a leader with ideas clearly influenced by the West, making him incompatible with the religious world-view of Islamic fundamentalists and generating the political context for ideological radicalization and terrorism.<sup>20</sup> In 1981, the Muslim Brotherhood launched its biggest attack, killing the Egyptian president Anwar al-Sadat as retaliation for the agreement that Sadat had signed with the United States, becoming the first Islamic country to recognize Israel as an independent State.

Terrorism has become the main form of public expression for many Islamic fundamentalist groups after the slow process of exclusion from international political debate perpetrated by the ruling Western powers. There were some episodes, like the U.S. support to Iraq in the war against Iran in the 1970s, and the international community's indifference to Soviet oppression of Islamic countries, especially Afghanistan, that were decisive in producing a profound ideologically-based division of the globe into zones of Judeo-Christian influence and Islamic influence. Thus, the September 11 attacks were one of the points of maximum exclusion and reciprocal rejection of the two traditions.

However, after these attacks, the international community began to deal with an agent that had until then been unknown in the military field: paramilitary groups with no territorial bases, whose attacks could be adapted to the needs and possibilities of the group. The effects of the offensives in Afghanistan and Iraq in 2003 proved that the U.S. government and its allies were trying to fight on the terms of modern war against an enemy and on a battlefield that did not fit that standard of war.

Some factors, like the difficulty of defining all the agents involved in a conflict and the international community's strong presence in trying to establish legal and moral standards of conduct in the sense of avoiding war, have transformed war into a globalized reality and an event with complications never before seen in history.

#### IV. UNDERSTANDING GLOBAL WAR AND ITS ONTOLOGICAL FOUNDATIONS IN GLOBALIZATION PROCESSES

The expression *global war on terrorism (GWOT)*, created by the U.S. government immediately after the September 11 attacks, summarizes the moment when the traditional concept of war lost its ground in the notion of Nation-State and became essentially a global phenomenon. In the present

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<sup>20</sup> For a concept of terrorism, we indicate Noam Chomsky, who uses the term "terrorism" to refer to "the threat or use of violence to intimidate or coerce (generally to political ends)." ALMANAC OF MODERN TERRORISM 264 (Jay M. Shafritz ed., Facts on File, 1991).



context, the definition of one side in the conflict —the United States and its allies— does not necessarily correspond to the definition of who the enemy is, because the enemy's increasing fragmentation into non-State cells does not allow us to understand war in the same sense in which it had been understood until now.

The first consequence of this conceptual change was the attempt to maintain the traditional notion of modern war —where Nation-States are the main or only agents actively capable of interacting in the conflict— through the wars initiated by the United States against Afghanistan (2001) and Iraq (2003). Arguing that both countries were involved in the September 11 attacks, the United States and its allies started a war along the same lines as modern war. Nevertheless, it took a few years for it to become clear that none of those countries has any causal relation —demonstrable in the logical-rational field— with the attacks of September 11.

Following the war in Iraq and the political and economic domination by the U.S. government in that country, a process of “fragmentation” of the comprehension of the United States' enemy began. The consolidation of the paramilitary group model adopted by Al Qaeda at end of the 20th century represented a political-military alternative for the radical Islamic groups ready to face the West and its conquering fury. The great problem in defining the territorial base according to the member's nationality and financial origins transforms those groups into *transnational companies* of terrorism, especially in view of the ease of moving from one country to another and the logistical structure to conduct attacks (small or large) in many different places. The nature of these groups is transnational and because of the use of high technology —produced by the West— and late generation weaponry combined with a permanent online worldwide financial system, the basic conditions are created for a group to do without a country as a territorial reference. Therefore, the reaction to the enemy cannot be like it was in the times when war was only among Nation-States.

Among all the elements of globalization, global war seems to be the one that has most quickly changed the world's politics. Throughout history, war was consolidated as an instrument to seek and carry out political objectives. Clausewitz used to define war as *nothing but a duel on an extensive scale*<sup>21</sup> which has as its final purpose *to compel our opponent to fulfill our will*.<sup>22</sup> But when war became a globalized event, many of these political objectives —as well as the objectives of the State or the non-State agent— were still being argued only through the use of typical expedients of modern war. Consequently, a global war is in truth a “world civil war”<sup>23</sup> unable to distinguish between internal/external, public/private, State/non-State and military/civil because all notions of frontier or boundaries have already vanished.

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21 CARL VON CLAUSEWITZ, ON WAR 118-119 (Penguin, 1968) (1832).

22 *Id.* at 119.

23 CARLO GALLI, GUERRA GLOBALE 68 (Laterza, 2002).

It is not really possible to talk about a Third World War. Firstly, this is because the conflict is not constant, determined in time —*i.e.*, with a clear beginning— and does not have defined States and purposes; and secondly, for the reason that the characteristics of global war seem to be closer to the Hobbesian *state of nations* (a real state of nature between nations) than the patterns of a classical 20th century World War. A degree of inconsistency in this process lies in the fact that the state of nature is a pre-State —as well as a pre-society— moment that is freely flourishing just at a time of great and increasing scientific and technological developments in the history of mankind and of a unique cognitive approach between peoples and cultures that had been separated by distance until now.

It is as if postmodern international politics were in a development process inversely proportional to that followed by the rest of mankind. Another degree of inconsistency of this new conception of war originates in the complete absence of *logos* (communication) among the agents in conflict.<sup>24</sup> Even though globalization has been characterized by the dissemination of information and all the new possibilities of intercultural contact (which necessarily means a communicational approach), there is no space for communication between agents that are theologically separated in the universe of global war. One of the presupposed parameters for any communicational process is the possibility to also question the maxims (the first principles) of the discourse. Notwithstanding universalizing in an absolute sense, the main maxims that represent answers to metaphysical questions —which range from anthropological to political issues— makes the religious orientation of the agents involved in the conflict an insurmountable obstacle to embark on any serious dialogue.

One of the most elementary concepts in war is the idea of “enemy,” the person who materializes and personalizes that against which we are fighting. We can define our true aims in the conflict in detail through the dialectical relation of thesis against antithesis established with the enemy. Schmitt used to say that the enemy is not anything that must be annihilated for any reason or due to a supposedly natural undervaluing; the enemy is at the same level that I am, which also answers the question “why should I fight him?”: to find my measure, to find my limits.<sup>25</sup>

However, the reality of global war has removed all possibilities for the parties to the conflict to distinguish between friends and enemies, for there is no declaration of war<sup>26</sup> by a given agent against another given agent. The

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<sup>24</sup> *Id.* at 28.

<sup>25</sup> CARL SCHMITT, *THEORIE DES PARTISANEN* (Duncker & Humblot, 1963); the Italian translation comes from *TEORIA DEL PARTIGIANO* 119 (Adelphi, 2005).

<sup>26</sup> The declaration of the U.S. government, made soon after the September 11 attacks, saying that it was the beginning of a “global war on terrorism,” seems insufficient to characterize the moment at which we started to change from modern war to global war. This

volatile nature of globalization causes the enemy to be volatile too, allowing interactions with the conflict to occur only according to their will. Within the context of global war, it makes the precise definition of “me” and “the others” absolutely irrelevant, just like the distinction between “friend” and “enemy.” As a result, we are allowed to recognize only the existence of a subjective line that separates two great zones of ideological-cultural influence —clearly oriented by the Judeo-Christian values that clash with the axioms of Islam— as a point that can define who is involved in the conflict if even only circumstantially.

This difficulty in defining who the enemy is also generates a condition of absolute unreliability in the populations of the countries directly or indirectly involved in the conflict, as seen, for example, in wars in the Balkans, Afghanistan and Iraq. As a consequence of this difficulty —or impossibility— to characterize “civilian,” “military” and “terrorist” groups, we are compelled to conclude that a similar situation occurred in 16th century Europe concerning maritime wars:<sup>27</sup> the definition of enemy was being all and any agent that acts, supports, collaborates or negotiates with a State or enemy group. In our already consolidated global society, with no boundaries and having global war as a permanent phenomenon, the argument “collaboration with terrorism” has been used more and more by the main world powers, especially by the United States and the United Kingdom, to detain and investigate any citizen, including those from their own country, without formal charges and without establishing limits to the detention. Instead of new horizons, we see global man reviving the same fears the vast blue sea produced in 16th century man.

The “absolute enemy,” who according to Schmitt,<sup>28</sup> was to be avoided due to the impossibility of seeking peace, is not immersed in the conceptual abstraction responsible for defining the parts that compose the two zones of religious influence that are at the root of global war. So, the same subtlety that defines the “enemy” will be the parameter to define “me,” giving an individual of global society —and consequently of global war— an empty existence in which he seeks something capable of clearing his doubts and ending his anguish.

Zolo presented a comprehensive interpretation of “global war” by dividing the term into conceptual subcategories as a way to analyze it from different epistemological perspectives without losing the dynamics that characterize the whole. We can summarize his proposal in four specific aspects.<sup>29</sup>

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is a process composed of several factors that go beyond that declaration made by the U.S. government in 2001.

<sup>27</sup> CARL SCHMITT, *LAND UND MEER* (1981). The Italian reference comes from: *TERRA E MARE* 72 (Giuffè, 1986).

<sup>28</sup> *Id.* at 131.

<sup>29</sup> Zolo, *supra* note 12, at 121-30.

The first is geopolitical. While ancient and modern wars have agents clearly involved in the conflict and defined moments in time, in global war the agents, duration and territorial venue are unknown. Both the declaration of war and the declaration of peace have been forgotten in this global context.<sup>30</sup>

The second aspect is the systemic nature of global war. Considering that international order is conceived as an anarchical<sup>31</sup> and decentralized system in which the most powerful figure is the leader, in a systemic interpretation the role occupied by the United States as “sheriff” of the world would necessarily exist, even in case of its replacement by another country. The criteria for determining hierarchy are merely based on power.

The third aspect is normative. The ineffectiveness of international law and international institutions in dealing with the post-September 11 situation confirms that international norms cannot compete with the political, economic and military power of the great powers. Ignoring human rights concerns, *jus ad bellum* and *jus in bello*, the U.S. government and its allies have resorted to methods that are no less cruel than those adopted by terrorist groups.

The fourth and last aspect is ideological. The ambitions of the great power in charge go beyond cultural, economic, political or military fields because the Manichaeism of the U.S. government brings the world back four hundred years and revives an argument similar to the one presented by the *Respublica Christiana* in defending its *auctoritas spiritualis* throughout the world. The “Axis of Evil” proves that the world today is once again divided into the faithful and the infidels.

Thus, by going beyond the political scope, global war is a conflict based on an incompatibility of basic concepts, such as human being, life, death, God and world, that are separating and entrenching the divides between Jews, Catholics and Muslims. More than the position of leadership is currently at stake: the very cultural identity of peoples is being threatened.

As a way of protecting the conquests of the West —or should we say, its impositions?— in the international community, the “humanitarian wars” that are supposed to defend human rights can be seen as something peculiar to global war. After the military interventions in Iraq in 1990 and in Yugoslavia in 1997, the occurrence of violations like apartheid, torture, genocide, inhuman or degrading treatment of ethnical minorities by a State was affirmed as a cause for the armed defense of international humanitarian law.<sup>32</sup> The paradox is that the solution found to solve a situation of internal crisis in a State that violates human rights requires military interven-

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<sup>30</sup> Schmitt, *supra* note 1, at 335.

<sup>31</sup> For the concept of “anarchy” in international relations, see HEDLEY BULL, *THE ANARCHICAL SOCIETY: A STUDY OF ORDER IN WORLD POLITICS* (Macmillan, 1977).

<sup>32</sup> DANILO ZOLO, *CHI DICE L'UMANITÀ* 23 (Einaudi, 2000).

tion, which is nothing short of “humanitarian war” and carries the same risks and uncertainties of any other war. In short, it is protecting from one evil by appealing to another evil.<sup>33</sup>

Besides all of the uncertainties about the practical results that those wars could present, there is a problem of an exclusively juridical nature. According to a cogent principle of international law expressed in many international documents and in the United Nations Charter in particular,<sup>34</sup> only self-defense could justify military action against another country, and any other military act, like these “humanitarian wars,” would be illegal from an international law perspective because there are peaceful measures foreseen by the international order for conflict resolution. Moreover, the power to decide on the legitimacy of the use of armed force is an exclusive prerogative of the UN Security Council<sup>35</sup>—a body that only approved the first war against Iraq in 1990 and did not authorize the actions in the Balkans and the second Iraq invasion.

In discussing the Yugoslav invasion by NATO, Ferrajoli points out some inconsistencies of this kind of war: NATO’s “humanitarian” war, beyond being a violation of international law and constitutional law, was in fact carried out with actions and procedures—for example, guaranteeing immunity to those who launched bombs and missiles at the cost of deadly errors called “side effects”—that have clearly violated the principles of the so-called “humanitarian law of war”, pertaining to the historical tradition of international law. NATO’s air attacks have provoked unintentional, but surely not unforeseeable effects: thousands of casualties of civilians, whose only guilt was to have failed to rid themselves of a despotic, criminal regime.<sup>36</sup>

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<sup>33</sup> It is yet too soon to see how Barack Obama’s administration will work with the legacy of his predecessor in terms of international politics. However, the commitment to international law and the pursuit of peace by diplomacy, as he stated in his acceptance speech for the Nobel Prize and in many other situations, would be effective measures to reduce instability in the international order, but certainly not enough to change the entire context of global war.

<sup>34</sup> Article 51: “Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.”

<sup>35</sup> Article 24: “In order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf.”

<sup>36</sup> Luigi Ferrajoli, *Guerra ‘etica’ e diritto*, 7 RAGION PRATICA 119 (1999).

Ferrajoli defends the idea that rationality strictly limits an act by its ultimate aims. He discusses the proper rationality of humanitarian wars, since this act, besides the huge costs and great suffering produced, is not simply inept but completely contrary to the noble purposes of States, and therefore it is an unreasonable, irresponsible act.<sup>37</sup>

For the purposes of this article, we will avoid dealing with these issues concerning human rights. For now, it is important to conclude that humanitarian wars provide empirical proof that there are no solid international institutions on the international scene. The decision of which conflicts are of greater interest for military intervention and which are not as important is left to the free will of the great powers. The autonomy of decision attributed to the great powers, especially to the United States, as to where and who to invade, and which international "rules" to respect, exposes the fragility of a system, namely, a lack of political integration, normative effectivity and, above all, an institutional structure capable of giving dynamism to the dialectical relation between Nation-States and the international community.

## V. OVERCOMING GLOBAL WAR

A systemic interpretation, like the one proposed by Zolo that argues that a leading figure in world politics necessarily exists, can surely be defended today as the concept of global war is being consolidated. However, this leadership does not seem to be essential to maintaining this new concept of war because associating that figure with the United States is only a circumstantial effect: either the United States could be replaced by another country able to play the role of "sheriff" of the world or there could be a new world division between two or more countries with similar political-military conditions. It is our understanding that the main fact which should call our attention is the ethnic-cultural separation process being generated by globalization between cultures and peoples that are theologically oriented by religions that do not recognize the existence of the others, such as Judaism, Catholicism and Islam. This separation process is to a great extent responsible for nourishing hostility within the international political system.

From a formal perspective, globalization has produced a cognitive approach among cultures and peoples never seen before in the history of mankind. But from a material perspective, it has had the opposite effect: it has created an environment of unavoidable approximation among peoples and has consequently started a permanent ideological conflict among cultures that until that time had simply tolerated each other. Other than that, there is the fact that economic globalization has increased social inequalities between the rich and the poor because, even though the Gross National

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<sup>37</sup> *Id.* at 120.

Product of the world has increased over the last two decades, a marked economic growth is seen in the countries that have historically concentrated capital and technology when compared with those that concentrate poverty, economic instability and social exclusion.<sup>38</sup>

Global war is one of the results of a slow impersonalization process of the weakest and the maximization of the main features of the strongest, once a direct fight would certainly be unequal. This tends to cause the weaker party to seek all the tactics and means that can help it face —or at least damage— the stronger party. If this tendency continues, the concept of global war will be consecrated as the standard conflict pattern in the global society of the 21st century because the concentrations of power and poverty are growing.

In this environment of conflict, actual “zones of cultural exclusion” have emerged. Behind fallacious speeches defending multiculturalism and the good relationship between peoples there is an axiological thinking aimed at the recognition and affirmation of its own principles and values, even if it is necessary to exclude and deny the other, the different one, for this purpose.

The problem seems to be more comprehensive than a “clash of civilizations.”<sup>39</sup> In Huntington’s interpretation, States still play a central role in the fault lines of wars<sup>40</sup> and consequently the fight for territory and material goods is still among the main reasons to start a war.<sup>41</sup> I do not agree with this analysis because it does not give due attention to the fact that States, borders and peoples are no longer guided by the Schmittian land-reference. Today we are talking about “zones of cultural exclusion” without focusing on the territorial aspect since the volatility of human relations in the global area has allowed conflicts within its own borders that have originated from the presence of —and unavoidable contact with— different patterns of axiological structures unable to recognize any other pattern as legitimate. Furthermore, there is also the fact that the USA is not a universal civilization, as Huntington argues, but a specific culture that cannot expect the whole world to model itself after it.<sup>42</sup>

<sup>38</sup> See HUMAN DEVELOPMENT REPORT 2007-8.

<sup>39</sup> See SAMUEL HUNTINGTON, *THE CLASH OF CIVILIZATIONS AND THE REMAKING OF THE WORLD ORDER* (Simon & Schuster Paperbacks, 2003).

<sup>40</sup> “Fault line conflicts are communal conflicts between states or groups from different civilizations. Fault line wars are conflicts that have become violent. Such wars may occur between states, between nongovernmental groups, and between states and non-governmental groups.” *See id.* at 252.

<sup>41</sup> “The fault line conflicts sometimes are struggles for control over people. More frequently the issue is control of territory. The goal of at least one of the participants is to conquer territory and free it of other people by expelling them, killing them, or doing both, that is, by ‘ethnic cleaning’.” *See id.*

<sup>42</sup> See PAUL HIRST, *WAR AND POWER IN THE 21ST CENTURY. THE STATE, MILITARY CONFLICT AND THE INTERNATIONAL SYSTEM* 100 (Polity Press, 2001).

Instead of trying to universalize a single culture and giving it the label “cosmopolitanism” or another word with the same meaning —as if this could solve all problems in international society, the greatest challenge the phenomenon of global war presents to States and the international community is to find proper ways of establishing political structures which could reduce the distances between individuals and the international order, transforming this system into a field based on something more solid than the contingent will of the leaders of the great powers. Considering the interpretation presented here, a proposal for juridical globalism articulated into Nation-State communities is viable to overcome —or reduce the effects of— the context of global war.

The successive failures in the implementation of universalist models of legal regulation in international politics, like those adopted by the League of Nations and in forming the United Nations, have an essential *aporia*: the impossibility to universalize the particular, *i.e.*, to prescribe an epistemological understanding of a specific and proper cultural tradition to the entire circumstances of mankind. Even though the debate around this topic presents provocative and difficult problems, we cannot develop further questions here due to space considerations.<sup>43</sup>

What appears undeniable is that international relations in the last few centuries have been divided by two opposed paradigms: the Kantian (based on the universalism of human nature and the idea of a universal peace that needs to be sought together by the whole international community) and the Grotian (based on the principle of self-determination of peoples, the balance of powers and viewing the international community as essentially anarchical). It is widely known that, especially in the UN Charter,<sup>44</sup> the 20th century has consecrated the Kantian ideal as the one to guide international relations.

Despite the Kant *vs.* Grotius debate, it seems possible to find a model that is not necessarily universalist or purely anarchical. Likewise, Kant has deduced the universal from the human nature and Grotius, the anarchical from the nature of the State. We would like to think of the international community as based on notions of ethnicity (in *lato sensu*), historical tradition and culture.

A peculiar condition of human beings is the task of dividing, distinguishing, separating and classifying everything that is brought to their notice, and the same process occurs with cultures.<sup>45</sup> It is the notion of distinction

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<sup>43</sup> For further developments, see ANDERSON TEXEIRA, *TEORIA PLURIVERSALISTA DEL DIRITTO INTERNAZIONALE* (Aracne Editrice, 2010).

<sup>44</sup> One of the UN's goals seems to be clearly inspired by Kant's ideas of *Zum ewigen Frieden*: “to unite our strength to maintain international peace and security.”

<sup>45</sup> “Culture is the activity of making distinctions: of classifying, segregating, drawing boundaries —and so dividing people into categories internally united by similarity and externally separated by difference; and of differentiating the ranges of conduct assigned to



and separation that allow cultures to remain alive because if it were not for the categorizations and classifications that every culture creates in relation to itself and the rest of the world, it would be impossible for a person part of any culture to distinguish between which alternative to choose when action needs to be taken, which values to choose and, finally, choosing between right and wrong, good and evil. The absence of differentiations results in the inexistence of deontological distinctions between what is “right” and what is “wrong.” Cultures must be responsible for persisting with differentiations since it is within them that moral concepts are created. However, it is impossible for global society to delegate this prerogative because it must remain indifferent to good and evil, like the medieval God that Bauman refers to,<sup>46</sup> unless it prevent the cultural interactivity within it and, at last, lose its originality and capacity to represent idiosyncrasies.

In virtue of this “classificatory nature” of human beings and cultures, we consider it necessary to look at the ethnic-cultural origins of peoples as the fundamentals of legitimacy of international communities, which should be, in a first instance, regional communities. We are not talking about an absolute rule, but a referential term that transcends the circumstantial interests and wills of States and is able to generate a rapprochement among nations that already are, by origin and historical formation, naturally close. Undoubtedly, according to these criteria, the globe could be divided into a dozen regional communities with ethnic-cultural bonds that approximate them in centuries or even millennia of common history.

The term “juridical globalism” is used here because the juridical instance over these regional communities would be that of supranational law, but in a “minimum international law” version.<sup>47</sup> Instead of universalizing rights and values that do not have any significance for peoples that do not acknowledge these values as real values or attribute any importance to these rights (as occurs today with a large series of specific “human rights” that do not mean anything for many peoples in the East), the supranational instance would receive only the product of what has already been approved inside the regional communities. The proper solution of international conflicts becomes more legitimate if started by a third country (or group of countries) which the parties involved recognized as a peer and not a complete stranger.

I use the expression juridical globalism to go beyond the almost exclusively political character of international relations: there is a need for internal institutionalization of the judicial instances proposed here, or otherwise

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the humans allocated to different categories.” ZIGMUNT BAUMAN, *THE INDIVIDUALIZED SOCIETY* 32 (Polity Press, 2001).

<sup>46</sup> See ZIGMUNT BAUMAN, *MISSING COMMUNITY* (Polity Press, 2001).

<sup>47</sup> For an initial reference, we refer to DANILO ZOLO, *I SIGNORI DELLA PACE* (Carrocci, 1998), especially its “Conclusione.”

maintain the spurious model of *ad hoc* tribunals presented since the Nuremberg trials as the standard jurisdiction in international law. The internal institutionalization of the international tribunals proposed here would permit a citizen of a Nation-State to appeal to his/her regional community tribunal the moment there is a serious violation of his/her fundamental rights by his own country, attested by the Constitutional Court sentence that confirms the violation or proclaims a decision not followed by the government or by the agent responsible for the violation. In this model, the regional community's sentence would automatically generate internal effects and would try to achieve the efficacy that was not attained by the decision of the Constitutional Court. However, in case of continued violation of that citizen's fundamental rights by the regional community tribunal, or in case of inefficacy, it would also be possible to appeal, as a last resort, to the supranational tribunal, to exhaust the last jurisdictional possibility of bringing justice to that citizen. It seems obvious that the division of subject areas of these two new, hierarchically-disposed jurisdictional instances authorities would need to be restricted; otherwise there would be a complete distortion of the State's internal sovereignty and the creation of an excessively slow judicial system to meet the needs of common citizens.

## VI. CONCLUSIONS

In this article, I have offered a brief proposal on how to reinterpret the concept of modern war from the perspective of globalization, especially in the sense of how an empirical concept like global war is changing the basic structures of the concept of modern war. More than a way, as Clausewitz would say, to compel our opponent to fulfill our will, global war is undergoing a process of consolidation in the international scene as the usual way of developing international politics. Like other conceptions of war that were created—and overcome—one by one, we can now see global war replace the modern concept of war.

In order to present a contribution to the solution of problems inherent to global war, we have introduced a few guidelines for a viable model of juridical globalism articulated into communities of Nation-States. Our intention is to propose something far from idealism or utopias, but grounded on realities that are historically consolidated and take into account the ethnic-cultural basis of peoples, transforming the philosophy of international law into an activity capable of transcending the contingent and unstable nature of international relations into a more solid, continuous and effective system that can inspire more certainty regarding international law in the citizens of our *global village*.